

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBYN J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C19-5997 RSM

**ORDER AFFIRMING THE  
COMMISSIONER'S DECISION**

Plaintiff appeals denial of her application for Supplemental Security Income, contending the ALJ erred by discounting her testimony and two examining doctors' opinions. Dkt. 9. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

Plaintiff is 31 years old, has a high school education, and has no past relevant work. Dkt. 7, Admin. Transcript (Tr.) 27. Plaintiff applied for benefits in June 2016 but later amended her alleged onset date to August 17, 2016. Tr. 19. Plaintiff's applications were denied initially and on reconsideration. Tr. 100, 110. After the ALJ conducted hearings in March and July 2018, the ALJ issued a decision in September 2018 finding Plaintiff not disabled. Tr. 54-99, 19-29.

1 **THE ALJ'S DECISION**

2 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

3 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset  
4 date.

5 **Step two:** Plaintiff has the following severe impairments: dependent personality  
6 disorder, anxiety disorder vs. PTSD, poorly controlled diabetes mellitus, chronic pain  
7 disorder, obesity, and cannabis abuse.

8 **Step three:** These impairments do not meet or equal the requirements of a listed  
9 impairment.<sup>2</sup>

10 **Residual Functional Capacity:** Plaintiff can perform light work. She can occasionally  
11 climb ladders, ropes, and scaffolds and frequently climb ramps and stairs. She can  
12 occasionally stoop, crouch, crawl, and kneel. She can have occasional exposure to  
13 hazards. She can perform tasks requiring a GED reasoning level of 3 or less in a setting  
14 with no public contact and no teamwork assignments.

15 **Step four:** Plaintiff has no past relevant work.

16 **Step five:** As there are jobs that exist in significant numbers in the national economy that  
17 Plaintiff can perform, she is not disabled.

18 Tr. 21-29. Plaintiff submitted a letter dated October 2018 from her treating therapist to the  
19 Appeals Council. See Tr. 12-14. The Appeals Council included the report in the record but  
20 denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final  
21 decision. Tr. 1-3.

22 **DISCUSSION**

23 This Court may set aside the Commissioner's denial of Social Security benefits only if  
the ALJ's decision is based on legal error or not supported by substantial evidence in the record  
as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

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<sup>1</sup> 20 C.F.R. § 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 **A. Plaintiff's Testimony**

2 An ALJ may "reject [a claimant's] testimony only upon (1) finding evidence of  
3 malingering, or (2) expressing clear and convincing reasons for doing so." *Benton ex rel. Benton*  
4 *v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003).

5 **1. Physical Symptoms**

6 Plaintiff testified she could lift five pounds, sit 20 minutes, stand 10 minutes, and walk 10  
7 minutes. Tr. 64. She spends half the day lying down due to pain. Tr. 65. Half the days she has  
8 a severe fibromyalgia flare-up and is unable to perform typical activities of daily living. Tr. 76.  
9 The ALJ discounted Plaintiff's testimony as inconsistent with the medical record and her  
10 activities. Tr. 25.

11 An ALJ may reject a claimant's subjective symptom testimony when it is contradicted by  
12 the medical evidence. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th  
13 Cir. 2008). Plaintiff reported she "cannot bend, squat, reach, kneel, or climb stairs [without]  
14 pain." Tr. 259. However, during a physical examination Plaintiff was able to bend and squat  
15 without discomfort. Tr. 533. This direct contradiction was a clear and convincing reason to  
16 discount Plaintiff's physical symptom testimony.

17 Impairments that can be "controlled effectively" by medication or treatment are not  
18 considered disabling for purposes of determining eligibility for Social Security benefits. *See*  
19 *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). Plaintiff reported a  
20 pain medication was "amazing" and she felt "so much better." Tr. 555. The ALJ reasonably  
21 interpreted this as indicating not merely mild improvement but effective control of pain. This  
22 was another clear and convincing reason to discount Plaintiff's testimony.  
23

1 Because the ALJ provided clear and convincing reasons, inclusion of any erroneous  
2 reasons was harmless. *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th  
3 Cir. 2008) (inclusion of erroneous reasons to discount claimant’s testimony was harmless  
4 because “remaining valid reasons supporting the ALJ’s determination are not ‘relatively  
5 minor’”). The Court concludes the ALJ did not err by discounting Plaintiff’s physical symptom  
6 testimony.

## 7 **2. Mental Symptoms**

8 Plaintiff reported anxiety prevented her from driving, walking, or taking a bus. Tr. 257.  
9 Plaintiff testified she has panic attacks every three days on average. Tr. 79. She has an average  
10 of one really bad day per month where she is “kicking, screaming, breaking things, being  
11 completely unreachable, hysterical, crying, in fact, waiting to jump off [a] bridge....” Tr. 74-75.  
12 Due to emotional irregularity she “can’t have normal interactions with people anymore.” Tr. 68-  
13 69. The ALJ discounted Plaintiff’s testimony as inconsistent with the medical record and her  
14 activities. Tr. 25, 22.

15 Substantial evidence supports the ALJ’s finding that treatment effectively controlled  
16 Plaintiff’s impairments. The ALJ cited a treatment note where Plaintiff reported “minimal  
17 anxiety” and activities including “socializing, going out and having friends over.” Tr. 328; *see*  
18 *also* Tr. 527 (goes out with friends). Another treatment note showed an antidepressant was  
19 “working great” and another medication worked for panic attacks. Tr. 875. Plaintiff argues the  
20 note also shows poor sleep and panic attacks twice a day. Dkt. 9 at 4. However, she has not  
21 claimed disability based on sleep, and the note shows medication was effective at treating “bad”  
22 panic attacks. Tr. 875. The notes provide substantial evidence supporting the ALJ’s finding of  
23

1 effective control of Plaintiff's mental symptoms, which was a clear and convincing reason to  
2 discount Plaintiff's mental symptom testimony.

3 The Court concludes the ALJ did not err by discounting Plaintiff's mental symptom  
4 testimony.

## 5 **B. Medical Opinions**

6 An ALJ may only reject the contradicted opinion of an examining doctor by giving  
7 "specific and legitimate" reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

### 8 **1. Brett Valette, Ph.D.**

9 Dr. Valette opined Plaintiff "can" understand, remember and carry out simple or detailed  
10 instructions, and "can cannot [sic]" maintain concentration and attention sufficient to carry out  
11 such instructions. Tr. 530. The ALJ reasonably found this was ambiguous and gave the opinion  
12 little weight. Tr. 26. It would be literally impossible to incorporate this self-contradictory  
13 opinion into the RFC. The Court concludes the ALJ did not err by discounting Dr. Valette's  
14 opinion.

### 15 **2. Dan Neims, Psy.D.**

16 Dr. Neims opined Plaintiff was unable to communicate and perform effectively in a work  
17 setting, and had very significant limitations in maintaining appropriate behavior and completing  
18 a normal workday and workweek. Tr. 818. The ALJ discounted his opinions because they were  
19 inconsistent with his own clinical observations, including possible malingering, and he opined  
20 the limitations would last no more than eight months. Tr. 27. The ALJ also noted Dr. Neims  
21 was not a treating provider and had not reviewed Plaintiff's records, but these are not reasons to  
22 discount his opinions. The regulations require an ALJ to consider all medical opinions and in  
23 fact place a premium on examining doctors' opinions. *See* 20 C.F.R. § 416.927(c)(1).

1 Social Security disability can only be based on inability to work due to impairments that  
 2 have “lasted or can be expected to last for a continuous period of not less than 12 months” or  
 3 result in death. 20 C.F.R. § 416.905(a). Thus, as the Commissioner notes, Dr. Neims’ opined  
 4 limitations did not meet the durational requirement for Social Security disability. Plaintiff does  
 5 not counter the Commissioner’s argument. This was a specific and legitimate reason to reject  
 6 Dr. Neims’ opinions. Inclusion of erroneous reasons was harmless. *See Molina v. Astrue*, 674  
 7 F.3d 1104, 1117 (9th Cir. 2012) (error harmless if “inconsequential to the ultimate disability  
 8 determination”).

9 The Court concludes the ALJ did not err by discounting Dr. Neims’ opinions.

#### 10 **C. Material Submitted to Appeals Council**

11 After the ALJ’s decision, Plaintiff submitted an October 2018 letter from her treating  
 12 therapist, Tina Mansfield, to the Appeals Council. Tr. 12-14. The Appeals Council found “this  
 13 evidence does not show a reasonable probability that it would change the outcome of the  
 14 decision.” Tr. 2. Plaintiff contends the letter is new and material evidence that deprives the  
 15 ALJ’s decision of substantial evidence. Dkt. 9 at 7.

16 “New evidence is material if it ‘bear[s] directly and substantially on the matter in  
 17 dispute,’ and if there is a ‘reasonabl[e] possibility that the new evidence would have changed the  
 18 outcome of the ... determination.’” *Bruton v. Massanari*, 268 F.3d 824, 827 (9th Cir. 2001)  
 19 (alterations and omission in original) (quoting *Booz v. Sec’y of Health & Human Servs.*, 734 F.2d  
 20 1378, 1380 (9th Cir. 1984)).

21 Ms. Mansfield’s letter largely recapitulated Plaintiff’s own self-reports, which the ALJ  
 22 permissibly discounted. Ms. Mansfield did report her observations of Plaintiff “having anxious  
 23 distress and breathing difficulty” when they discussed the need to telephone health or legal

1 services providers, and of Plaintiff attending less than half her appointments when they were  
2 weekly and canceling once a month when switched to biweekly appointments. Tr. 14. Ability to  
3 telephone, or attendance at therapy, do not bear directly and substantially on matters in dispute  
4 before the ALJ. Plaintiff argues the “50-60% loss of attendance for counseling sessions” Ms.  
5 Mansfield observed clearly indicates Plaintiff would be off task more than 10% of the time or  
6 absent more than one day per month from work. Dkt. 11 at 6. That is not what Ms. Mansfield  
7 wrote nor a necessary logical inference from what she wrote. Plaintiff fails to establish a  
8 reasonable possibility that this letter would have changed the outcome of the disability  
9 determination. The Court concludes Ms. Mansfield’s letter does not deprive the ALJ’s decision  
10 of substantial evidence.

### 11 CONCLUSION

12 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this  
13 case is **DISMISSED** with prejudice.

14 DATED this 24<sup>th</sup> day of April, 2020.



16  
17  
18 RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE